

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE: :
: Chapter 11
NORTHWESTERN CORPORATION, :
:
Reorganized Debtor. : Case No. 03-12872 (KJC)
:

MAGTEN ASSET MANAGEMENT CORP., :
:
Plaintiff, :
:
v. : Civil Action No. 05-499-JJF
:
MIKE J. HANSON and ERNIE J. :
KINDT, :
:
Defendants. :

MEMORANDUM ORDER

Pending before the Court in the above-captioned action are three motions: (1) the Motion Of Defendants Michael J. Hanson And Ernie J. Kindt For Leave To File A Dispositive Motion And Brief In Support (D.I. 141); (2) the Joint Motion Of Magten Asset Management Corporation And Law Debenture Trust Company Of New York For Leave To Amend The Complaint And/Or, In The Alternative, For Extension Of Time To Seek Leave To Amend The Complaint (D.I. 142); and (3) the Motion To Strike Proposed First Amended Complaint (D.I. 154) filed by Defendants Michael J. Hanson and Ernie J. Kindt. For the reasons discussed, the Court will deny Defendants' Motion For Leave To File A Dispositive Motion and deny with Leave To Renew Plaintiff's Motion To Amend and Defendants' Motion To Strike.

I. THE PARTIES' CONTENTIONS

By their Motion, Defendants request leave of Court to file a dispositive motion prior to September 17, 2007, the date set in the Scheduling Order for the filing of such motions. Defendants contend that the Court's decision in a related matter, Magten Asset Management Corp., et al. v. Paul Hastings Janofsky & Walker, LLP, Civil Action No. 04-1256 (the "Paul Hastings decision") is dispositive here, and the parties should not be required to continue with the expensive and time consuming discovery process.

Plaintiff, Magten Asset Management Corporation, contends that Defendants filed two previous dispositive motions and should not be permitted a "third bite at the apple" until discovery is closed. Plaintiff further contends that any defects in the existing Complaint can be fully cured by an amendment. Thus, Plaintiff has also filed a Motion For Leave To Amend Complaint And/Or Extension Of Time To Seek Leave To Amend.

II. DISCUSSION

This case and several related cases have had protracted histories, including mediation attempts both in this Court and in the Court of Appeals for the Third Circuit. The parties in this case are currently before the Special Master with numerous discovery disputes. The Special Master has issued Bench Rulings and a Report And Recommendation (D.I. 235, 236) with respect to

several of the issues, and additional issues remain pending. (D.I. 235 at ¶ 31.) Plaintiff has also sought to amend the Scheduling Order to allow for a total of 14 depositions, 4 more than currently provided, and to extend the discovery deadline to allow for the completion of these depositions. (D.I. 210.) The Special Master addressed this issue in his Report and Recommendation and concluded that each side should be permitted to take 15 depositions, with the fact deposition cut-off being extended from May 2 to June 30, 2007. (D.I. 235 at ¶ 30.)

In these circumstances, the Court agrees with Plaintiff that the parties' focus should remain on the completion of discovery, and therefore, the Court will hear all case dispositive arguments in the manner set forth in the Scheduling Order and not before. For these same reasons, the Court will not, at this juncture, entertain Plaintiff's Motion To Amend The Complaint or Defendants' Motion To Strike, and therefore, both of these Motions will be denied with leave to renew.

NOW THEREFORE, IT IS HEREBY ORDERED that:

1. The Motion Of Defendants Michael J. Hanson And Ernie J. Kindt For Leave To File A Dispositive Motion And Brief In Support (D.I. 141) is **DENIED**.

2. The Joint Motion Of Magten Asset Management Corporation And Law Debenture Trust Company Of New York For Leave To Amend The Complaint And/Or, In The Alternative, For Extension Of Time

To Seek Leave To Amend The Complaint (D.I. 142) is DENIED with leave to renew.

3. Defendants' Motion To Strike Proposed First Amended Complaint (D.I. 154) is DENIED with leave to renew.

June 8, 2007
DATE


UNITED STATES DISTRICT JUDGE